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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:

NO. 100-100000-1000

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

DATE OF HEARING: SEPTEMBER 8, 2004

PLACE OF HEARING: WASHINGTON, D.C.

REAL R. GROSS & CO., INC.
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

IN THE MATTER OF:

SAN FRANCISCO UNIFIED
SCHOOL DISTRICT

MB Docket No. 04-191

For Renewal of License for
Station KALW(FM),
San Francisco, California

Facility ID No. 58830
File No. BRED-19970801YA

Hearing Room TW A363
445 12th Street, S.W.
Washington, D.C. 20554

Wednesday,
September 8, 2004
9:30 a.m.

BEFORE:

JUDGE RICHARD L. SIPPEL

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I-N-D-E-X

WITNESS:CROSS REDIRECT RE CROSS

None.

EXHIBITS:IDENTIFIED RECEIVED

None.

Start Time: 9:35 a.m.

End Time: 10:11 a.m.

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P-R-O-C-E-E-D-I-N-G-S

9:35 a.m.

JUDGE SIPPEL: Court reporter, you're all set?

COURT REPORTER: Yes.

JUDGE SIPPEL: Okay. Let's go on the record. This is the first prehearing conference in San Francisco in the matter of San Francisco Unified School District, MB Docket No. 04-191. And I'm going to, at this point, take appearances of counsel on the record, please. First, on behalf of the School District? Can I refer to that as the School District?

MS. REPP: That's fine. I'm appearing on behalf of the School District. My name is Marissa G. Repp. I am with Hogan and Hartson.

JUDGE SIPPEL: And on behalf of the Bureau?

MR. SHOOK: James Shook and Dana Leavitt.

JUDGE SIPPEL: Thank you. I know that there have been some pleadings filed this morning. I want to use this opportunity to tell both counsels, before I forget, that anything that is coming to me by

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1 email goes to my legal tech, Sheila Parker, as well.
2 All right.

3 Now, there is a nonparty in this case,
4 thus far a nonparty, Golden Gate Public Radio. It is
5 my understanding, from reading the Hearing Designation
6 Order, is that's the entity that provided the
7 information to the Commission, which is the basis for
8 which this proceeding has ultimately been brought and
9 they have been invited. They have been virtually
10 designated a party to the case by the Hearing
11 Designation Order, but I have not seen any, you know,
12 Notice of Appearance.

13 MR. SHOOK: Nor will you.

14 JUDGE SIPPEL: Nor will I? All right.
15 Well, not much legal room there. Okay. Will
16 somebody, the Bureau or the School District, file an
17 appropriate motion with the appropriate affidavits to
18 verify, you know, that there has been a proper service
19 made or attempted to be made and that there has been
20 no response and efforts have been made to contact them
21 and there has been nothing there?

22 MR. SHOOK: I think we can sign onto a

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1 joint motion.

2 JUDGE SIPPEL: Okay. While I'm on Notices
3 of Appearances, and this is more of a procedural
4 matter than a substantive matter, but the Bureau is
5 here this morning and the Bureau is going to
6 participate in this case, but the Bureau didn't file
7 a Notice of Appearance and I guess I should ask why.
8 The rules don't carve out an exception to the Bureau.
9 Although, I can understand some of the practicalities
10 here.

11 MR. SHOOK: As a practical matter, Your
12 Honor, we have never filed a Notice of Appearance, but
13 that doesn't mean that -- if Your Honor would like us
14 to do so in the future, we could certainly do that.

15 JUDGE SIPPEL: Well, let me tell you why
16 and I can, you know, put that in my maybe boiler plate
17 prehearing or assignment order. The reason is is that
18 if, and this is all hypothetical now, but if Golden
19 Gate showed up here this morning with counsel and the
20 Bureau showed up here with counsel and neither the
21 Bureau nor Golden Gate have filed a Notice of
22 Appearance, notwithstanding what's in the Designation

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1 Order, I would be hard put to tell them that you can
2 be heard, but they can't be heard.

3 Do you follow what I'm saying?

4 MR. SHOOK: Yes, Your Honor.

5 JUDGE SIPPEL: As I say, it's hypothetical
6 in this case and it's an unusual situation, but
7 anyway, I just thought this through yesterday in
8 preparing for this and the question came up in my
9 mind, so what would happen if Golden Gate all of a
10 sudden walked in the courtroom?

11 MR. SHOOK: We can certainly make it a
12 matter of practice for us in the future to file
13 Notices of Appearance. I have appeared before Your
14 Honor multiple times over the course of well, it's
15 probably going on 15 years now and I have not yet
16 filed a Notice of Appearance in any proceeding in
17 which I have appeared on behalf of the Bureau, but
18 that doesn't mean that I can't do so in the future.

19 JUDGE SIPPEL: All right. Well, my
20 experience is a little bit more mixed than that but,
21 on the other hand, it has been such a long time that
22 we have done comparative cases in any kind of volume

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1 that I can't pinpoint exactly, you know, what cases
2 are when or what my understanding of the practice was.
3 But certainly, everything you say is absolutely true
4 and I don't want to belabor this. We have got more
5 important things to do, but I appreciate your
6 response.

7 Now, let me move forward on this. I'm
8 trying to think. This is a renewal case, but it's not
9 a comparative renewal case, which leads me to ask two
10 questions, one of which has been half answered, I
11 think, by Ms. Repp's side. But one would be is there
12 a relevant renewal period or does the relevant period
13 have to do with the -- the relevant period would be
14 the period covered by the misrepresentation issue?

15 MR. SHOOK: Your Honor, as I understand
16 the Designation Order, we're looking at two matters
17 primarily. One being the certification that the
18 School District made when it prepared its renewal
19 application back in 1997, and then the other primarily
20 deals with statements made by the School District in
21 defense of its application made beginning in early
22 1998 and continuing through at least 2001, primarily

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1 focusing on the April 2001 letter that the School
2 District submitted in response to a Media Bureau
3 inquiry in February of 2001.

4 JUDGE SIPPEL: So are you suggesting that
5 that would be the relevant period of time?

6 MR. SHOOK: Well, those are the two
7 relevant incidents or series of incidents that the
8 Designation Order is focusing on.

9 JUDGE SIPPEL: Well, it also talks about
10 1991 to a great extent, which is when the original
11 application was filed.

12 MR. SHOOK: Well, there is also, I guess,
13 the possibility of -- was there the possibility of
14 forfeitures? I don't remember.

15 MS. LEAVITT: Yes.

16 JUDGE SIPPEL: Oh, yes.

17 MS. LEAVITT: 300,000.

18 MR. SHOOK: Okay. With respect to the
19 public file and, to that extent, yes, it could go back
20 all the way to 1991.

21 MS. REPP: Your Honor, if I may?

22 JUDGE SIPPEL: Ms. Repp, yes, please?

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1 MS. REPP: Yes. The Hearing Designation
2 Order, Issue 3 said "To determine, in light of the
3 evidence produced pursuant to the specified issues, if
4 the caption application for renewal of license for
5 Station KALW(FM) should be granted."

6 Given the breadth of that issue, I would
7 suggest that the relevant period starts on -- and I
8 believe it's December 1, 1990 when the renewal period
9 meant through to, and as we mentioned in our motion to
10 enlarge issues, until the period of time when the
11 license became threatened by the Hearing Designation
12 Order, which would be July 16, 2004.

13 JUDGE SIPPEL: That's when you were put on
14 notice that there might be a problem?

15 MS. REPP: Yes.

16 JUDGE SIPPEL: Well, all right. I don't
17 have -- and certainly, if you all stipulate to
18 relevant dates, that would be helpful, but you don't
19 have to. I think that the evidence can be offered.
20 If there is going to be an objection on the passage of
21 time or reliability, I can rule on it at that time.

22 MR. SHOOK: I think we can reach an

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1 understanding as to the relevant dates.

2 JUDGE SIPPEL: It just helps me focus a
3 lot better. I don't know if it helps, but let's leave
4 that as it is and, at an appropriate time, you'll get
5 back to me on that.

6 MR. SHOOK: I mean, as it is, I think both
7 of us recognize that this period is rather extensive.

8 MS. REPP: Yes.

9 JUDGE SIPPEL: Yes, which --

10 MR. SHOOK: We could really make --

11 JUDGE SIPPEL: It brings a question to my
12 mind I guess I shouldn't ask. I won't ask it then.
13 I don't need to know. Let's see. All right. Now,
14 the burden of proof under 309-6 and 309-E of the Act
15 is on the renewal applicant, the School District. The
16 burden of proof on the forfeiture would be with the
17 Bureau. So we have got split responsibilities there.

18 All of this leads me to really the
19 question of the motion that was filed yesterday to
20 enlarge, which is essentially a meritorious service
21 issue, and the question that was in my mind as I was
22 preparing for this today is that, although certainly

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1 my mind wasn't as clarified as this motion is, but
2 wouldn't this evidence be relevant anyway? I mean,
3 it's a renewal case.

4 MR. SHOOK: Well, Your Honor --

5 JUDGE SIPPEL: You have got a forfeiture
6 issue. You have got a misrepresentation issue. Let
7 me just finish. You have got forfeiture and
8 misrepresentation. You have got considerations that
9 cover a whole range of circumstances. Okay. That's
10 my question. Wouldn't the service evidence be
11 relevant anyway?

12 MR. SHOOK: If this were strictly a
13 misrepresentation case, I would think the KQED
14 precedent would suggest that meritorious programming
15 was not an issue unless it met whatever test the KQED
16 decision imposed, and I don't remember all of them off
17 the top of my head, but I believe that is certainly a
18 pertinent decision to consider.

19 Given that we have forfeiture
20 possibilities here and there are a variety of factors
21 that go into determining what a proper forfeiture
22 amount could be, conceivably meritorious programming

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1 could be a relevant factor, but I would like to, you
2 know, research the matter further before making any
3 commitments on behalf of the Bureau. I mean, I
4 believe we have a period of time in which to respond
5 to the motion and we intend to file a response.

6 JUDGE SIPPEL: I want to give you dates on
7 that, but I take it then that you were not expecting
8 this to come in?

9 MR. SHOOK: No, we had talked a little bit
10 beforehand about it. I mean, I had an idea it was
11 coming. Just until you actually see it, you don't
12 know.

13 JUDGE SIPPEL: All right.

14 MS. REPP: Your Honor?

15 JUDGE SIPPEL: Ms. Repp, yes?

16 MS. REPP: To the extent that your
17 question is do you need to designate or enlarge the
18 issues to address the record, I had that and I
19 questioned myself on that. I was mentioning to Mr.
20 Shook that I pulled out my dusty old comparative
21 renewal file that I worked on when I was a young
22 associate, and to my surprise I did not see that we

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1 had enlarged the issues for meritorious programming.
2 It was part and parcel of the comparative renewal
3 proceeding. You did not need to add the issue.

4 But there are other cases of a stand alone
5 renewal application where the presiding officer did
6 add an issue, and I guess in an abundance of caution
7 we felt it was wise to request that the issue be
8 added. And I think you could rule either way, that if
9 you want to rule in our favor, that you could say
10 let's have this issue specifically or you could
11 determine that it is part and parcel of the issues
12 before you and we can provide the same types of
13 evidence.

14 JUDGE SIPPEL: Okay. Well, I appreciate
15 that. I must say, I mean, the issue sharpens my
16 thinking on the question of meritorious service. I
17 mean, it's a well-prepared motion. You know, I'm
18 going to wait until I see what Mr. Shook files and
19 then you're going to reply to it.

20 But my question is when you have got the
21 possible loss of a license on a renewal even though
22 there is no challenger, and you have got forfeitures,

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1 which could be anywhere from zero to a considerable
2 amount of money, how could I exclude evidence on
3 meritorious service and whether it would actually go
4 to the scope of meritorious service that would qualify
5 for a renewal expectancy if it were in a comparative?

6 You know, I mean, I guess that's a
7 question of the weight and degree to which it would be
8 treated, but anyway, that is my rambling thought of
9 the day. You're going to brief the issue. I'll wait
10 until I see the briefs.

11 I would like to give you dates on that if
12 I might, but taking into account that there might be
13 some -- well, never mind why I'm taking this into
14 account. 10 days to oppose, but I'm going to be
15 generous on that and say September 20, which is a
16 Friday.

17 MR. SHOOK: I show that as a Monday, Your
18 Honor.

19 JUDGE SIPPEL: Is that a Monday? That's
20 what I did, I changed the date, but I didn't look at
21 the calendar. Is that all right though? Do you have
22 any problem with that date?

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1 MR. SHOOK: Your Honor, if I may have it
2 on the 21st rather than the 20th.

3 JUDGE SIPPEL: Sure.

4 MR. SHOOK: Just in case there are some
5 last second --

6 JUDGE SIPPEL: Sure.

7 MR. SHOOK: -- things to be done.

8 JUDGE SIPPEL: Sure. That's okay. You
9 don't have any objection to that, do you, Ms. Repp?

10 MS. REPP: No, I do not.

11 JUDGE SIPPEL: As long as I do the same
12 thing on the other side. I was going to give Ms. Repp
13 the 27th, but I will give Ms. Repp the 28th on the
14 reply.

15 MR. SHOOK: Your Honor, considering that
16 we'll be in San Francisco, at that point, I think Ms.
17 Repp -- well, I shouldn't necessarily speak for her,
18 but at the same time I think it ought to be kicked
19 back at least a week.

20 JUDGE SIPPEL: Okay. You mean in
21 additional time?

22 MR. SHOOK: Yes, sir. And she can

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1 certainly ask whatever she wants.

2 MS. REPP: I can tell you that I am
3 presently going to be flying back on August 30th.
4 October 1st is Friday, and so October 4th, is that a
5 Monday?

6 JUDGE SIPPEL: Okay. Because there's more
7 than you on this case.

8 MS. REPP: Yes.

9 JUDGE SIPPEL: I mean, I'm not trying to
10 push you on this, but the longer the reply is out
11 there -- well, I can start working on something with
12 an opposition and wait for the reply. All right.
13 What date do you want?

14 MS. REPP: Why don't we take October 4th
15 and we'll endeavor to get it sooner.

16 JUDGE SIPPEL: Sure. All right. That's
17 okay. So it will be September the 21st, which is a
18 Tuesday, and it will be October the 4th, which is a
19 Monday. Is that okay with you?

20 MS. REPP: Yes.

21 JUDGE SIPPEL: Okay. It's a Monday. All
22 right. I had some housekeeping. I mean, I might as

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1 well mention it now though, and that is with respect
2 to these things are all being hand delivered. I have
3 been counting the days without giving three days
4 allowance, but I have been giving you more time anyway
5 for other reasons. So you're not being prejudiced by
6 that.

7 But let me just go back again to the
8 question of these courtesy copies. I encourage email
9 copies to myself and my legal tech. From the
10 standpoint of the School District, I really have to
11 insist on a fax copy in addition and the reason is
12 twofold.

13 First of all, if I don't get to my email
14 for whatever reason, the fax is always there and I'm
15 not going to miss it. Secondly, the hand delivery
16 procedures for the Commission, I'm not going to try
17 and go into it with you, because I'm not quite exactly
18 sure what they are, but ever since 9/11 it has been --
19 I can almost guarantee you that I'm not going to see
20 it the day that you hand deliver it downstairs.

21 But I ask you to, please, if you would, if
22 it's going to be hand delivered in addition to the

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1 other services that I mentioned, call the office, call
2 my legal tech or call Mary Gosse, the administrative
3 officer, and I have her number here, at 418-2299. She
4 will be as a backup to Sheila if you can't reach her.

5 And I might also add, too, that I have no
6 problem. I don't particularly want to get a call, you
7 know, on my direct line directly from counsel that I
8 have to somehow or another try and respond to, but if
9 you email me that, you know, you have a situation,
10 that you want to talk on the phone with a conference
11 call, you know, by all means you're invited to do
12 that.

13 And there are going to be depositions and
14 I will be available. You're going to be out there in
15 San Francisco. I will be available until 4:00 here
16 and, you know, unless there is an unusual situation
17 where you give me advanced notice before 4:00 that you
18 need me later, but if it's just a routine question,
19 you better ask it to me by 4:00 or it's going to have
20 to wait until the next morning.

21 MR. SHOOK: We'll try to keep our problems
22 until the morning.

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1 JUDGE SIPPEL: And I will give you my
2 direct line off the record. I don't want to -- well,
3 never mind. We'll take care of that, but I do want to
4 let you know my availability and my interest in doing
5 that if there's a good reason to do it.

6 There has been considerable discovery
7 already undertaken by the Bureau, but I see that there
8 are now objections to the "routine questions" that
9 were asked and the request to admit, so we're going to
10 have to rule on those, too, all of which leads me to--
11 I had some dates in mind, but I think they are
12 becoming more and more unrealistic for a hearing date
13 and the procedural dates leading up to it.

14 Let me ask this question. So far, I count
15 six depositions that the Bureau has noticed. Can you
16 anticipate additional depositions? Obviously, Ms.
17 Repp, you are going to participate in the depositions.

18 MS. REPP: Yes.

19 JUDGE SIPPEL: And the depositions have
20 information that would be of interest to both sides.
21 Without committing, but does either side anticipate
22 additional depositions from what you know now?

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1 MR. SHOOK: Yes, we do.

2 JUDGE SIPPEL: Considerable? I mean, when
3 I say considerable, more than five, less than three,
4 what?

5 MR. SHOOK: That depends in part on what
6 we find out from interrogatory answers. It depends in
7 part on what we learn during the depositions
8 themselves.

9 JUDGE SIPPEL: Oh.

10 MR. SHOOK: There are at least -- I
11 anticipate at least two depositions taking place with
12 respect to people who are now in this area, one of
13 which, I suppose, could be contentious given the
14 person's prior position, vis-a-vis, SFUSD. The other
15 would be relatively routine.

16 JUDGE SIPPEL: Well, that's interesting
17 notice, okay, a contentious deposition.

18 MR. SHOOK: Contentious to the extent that
19 this is something that I have not yet brought up with
20 Marissa.

21 JUDGE SIPPEL: You don't have to do it
22 here.

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1 MR. SHOOK: But there is no time like the
2 present.

3 JUDGE SIPPEL: It's up to you.

4 MR. SHOOK: In any event, no, this is
5 something we can talk about afterwards.

6 JUDGE SIPPEL: All right.

7 MR. SHOOK: But certainly, there is one
8 individual that has been identified who was involved
9 in the preparation of the renewal application, and
10 that person is now here and there wasn't the same time
11 pressure to get out a notice for him, because we don't
12 have to travel anywhere to find him.

13 The San Francisco depositions were a
14 different matter all together. We had a number of
15 considerations to work through and so that, in part,
16 dictated the speed with which the notices went out
17 perhaps. You know, well, that's basically it.

18 JUDGE SIPPEL: All right. Okay. And if
19 we do get into this meritorious service question,
20 there may be some more deposing that would be sought,
21 at that point, too.

22 MR. SHOOK: Possibly. I mean, the tact

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1 that we have taken, arguably, is a bit unusual in the
2 sense that the Bureau doesn't have the burden with
3 respect to the misrepresentation question.

4 JUDGE SIPPEL: Yes.

5 MR. SHOOK: As you pointed out, we do have
6 the burden with respect to the forfeiture question,
7 but, you know, we wouldn't be here without the
8 misrepresentation question. I mean, that's the big
9 issue, that we're working through that in the fall
10 certification and we have taken a more proactive
11 stance than we have in a lot of other cases.

12 And that leads us to going out to San
13 Francisco at the end of this month and also will
14 probably result, as I said, in at least one and
15 probably two, maybe two, additional depositions taking
16 place here. That's just the way we're looking at it.
17 I have no idea, you know, whether the School District
18 intends to depose people or not.

19 MS. REPP: At this time, Your Honor, I
20 would anticipate that the persons being deposed by the
21 Bureau would be those that we would be interested in
22 speaking with. In terms of meritorious service, I

1 anticipate and I would hope that we would have the
2 ability to do a direct, written case on meritorious
3 service and that it is unlikely that we would be doing
4 depositions.

5 JUDGE SIPPEL: Well, I certainly would,
6 you know, be encouraging depositions in those
7 situations but, on the other hand, what I'm trying to
8 do here is get some kind of a time frame in my mind
9 and the scope of discovery is critical to even doing
10 that.

11 MR. SHOOK: Well, to give you some help
12 there, as far as that goes, I would think that we
13 would not make the determination as to, you know, how
14 we would want to proceed with respect to depositions
15 until we have completed the San Francisco round, and
16 given that deponents are entitled to 21 days notice,
17 it would seem, you know, likely that we would not get
18 the second round of depositions completed until late
19 October or early November.

20 But at that point, I would think we would
21 be pretty much ready and, frankly, we would be in a
22 position to determine whether or not a hearing was

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1 necessary. I see a possibility, a possibility that
2 this matter could be resolved in some fashion short of
3 a hearing, but that remains to be seen depending on
4 how the discovery goes.

5 JUDGE SIPPEL: Well, that would be by way
6 of motion unless the Patriot Act has given you some
7 kind of a remedy I'm not aware of.

8 MR. SHOOK: No, sir, we didn't anticipate
9 doing anything so dramatic.

10 JUDGE SIPPEL: Okay. All right. What I
11 am concluding here today is that it's too early to set
12 hearing dates. I would ask counsel to report back to
13 me, require you to report back to me in 30 days and
14 see if you can come up with an initial set of dates.
15 I think 30 days to propose hearing and procedural
16 dates, and I will tick off what they are, what the
17 categories are, and that would be, you know, also in
18 the form of a status report on how the discovery is
19 going and what more may be anticipated.

20 I don't see what else I can really do
21 unless you all have already agreed to something that
22 you want to raise at this time. And I don't think

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1 that that's unreasonable in terms of the progress of
2 the case, because the Bureau has been sufficiently
3 diligent to get the initial wave of discovery out and
4 it seems like there is a sufficient degree of
5 cooperation going on between counsel, that this should
6 progress.

7 I would be very interested to know if you
8 think you're going to dispose of this case, however,
9 by motion, I'm going to require that you file with me
10 first a request to proceed by way of motion. I don't
11 think that I need to put myself or the case in the
12 situation where I have to deal with a voluminous
13 motion if I am convinced that I want to see witnesses
14 and, you know, that it's not going to work as far as
15 I'm concerned, I mean, and it will save you time also.

16 On the other hand, it doesn't mean, you
17 know, that I am opposed to the idea at all. You might
18 be right. You might be right. I would just ask to
19 say that I'm going to have a requirement that you file
20 something preliminary to the motion of summary
21 decision to convince me of that. Okay.

22 Did you have any other thoughts on that

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1 subject, Ms. Repp?

2 MS. REPP: I have an ancillary subject.

3 JUDGE SIPPEL: What about on summary
4 decision? I mean, here I'm jumping into this without
5 having really heard adequately from you.

6 MS. REPP: Oh, I think this case could be
7 appropriate for summary decision, and I would welcome
8 an opportunity to file a joint motion or asking you to
9 consider a further motion for summary decision.

10 JUDGE SIPPEL: Well, I --

11 MS. REPP: On some or all the matters.

12 JUDGE SIPPEL: All right. Well, then if
13 that's the case then, what you would have to file with
14 me would not have to be -- I mean, if it's not going
15 to be something that's going to be opposed then, you
16 know, it could just be a very short filing to explain
17 the situation to me as to why. And that's very
18 interesting. Okay. There's a good possibility. All
19 right.

20 What else do we need to know? I'm sorry,
21 you said you had an ancillary?

22 MS. REPP: Well, I do, Your Honor. Under

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1 the rules, 73.3594, when the hearing date is set, the
2 renewal applicant must issue a public notice in the
3 local newspaper and for four days on the air on the
4 station detailing the precise matters that are set for
5 hearing, and I would like to move either now or if you
6 would like it more formally in writing that the
7 presiding officer exercises his jurisdiction under
8 1.205 to extend any date.

9 And here I am concerned that perhaps if
10 you set the hearing date in a month or so when we come
11 back with a status report, that there will still be
12 the three issues outstanding. There may or may not
13 be, given our pleading cycle, the additional issue on
14 motion to enlarge. So any notice that is issued in
15 early October might be over-inclusive or under-
16 inclusive.

17 Given that we perhaps could have
18 stipulations or motions for a summary decision, a
19 public notice that talks about violations or
20 misrepresentations that goes out over the air could be
21 misleading to the public and it could also, frankly,
22 damage the station. The station relies primarily on

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1 its listeners for support. Over 80 percent of its
2 budget is from listeners. They have over 11,000
3 members. For example, they are going into a pledge
4 drive next week.

5 And I would request that until we get down
6 to seeing an actual hearing -- also, there might be a
7 hearing, we might need to do a hearing out in San
8 Francisco partially to the extent that there might be
9 witnesses or cross examination there, that the notice
10 would make more sense to the public if it were closer
11 to the actual hearing date.

12 And under the Act, under Section
13 311(a)(2), the notice does not need to go out until 10
14 days before. So I would request that perhaps the
15 presiding officer could determine that our notice must
16 be initiated 30 days before the hearing date and, at
17 that point, one would hope that we would have a more
18 cohesive and, hopefully, narrowed set of issues that
19 would have to be discussed in the public notice.

20 JUDGE SIPPEL: Well, why would the 30 days
21 be of more advantage to you than the 10 days?

22 MS. REPP: Well, I would say 10 days, but

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1 the rule does require two weeks publication in a
2 newspaper, so we need to go back at least two weeks.
3 Two weeks is fine by me or three weeks prior. I just
4 rounded it off to 30.

5 JUDGE SIPPEL: Rounded it off to 30 days.
6 And that would not have to be -- that publication
7 requirement would not kick in then until we actually
8 had set a hearing date then. Is that correct?

9 MS. REPP: That's my understanding of the
10 rule.

11 MR. SHOOK: That would make sense.

12 JUDGE SIPPEL: Okay. Well, it sounds like
13 we're in agreement. I don't have any problem with it.
14 I would just be sure that I'm sufficiently reminded of
15 this at some point, and it would have to do with
16 setting it. The order in which I actually set the
17 hearing dates would contain some kind of a provision
18 about this publication.

19 MS. REPP: I think that would be helpful.

20 JUDGE SIPPEL: All right.

21 MS. REPP: To document that one.

22 JUDGE SIPPEL: All right.

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1 MS. REPP: Thank you, Your Honor.

2 JUDGE SIPPEL: Thank you. Okay. Let me
3 give you the categories and these would be dates in
4 descending order. Of course, there is the hearing
5 date. If there is going to be evidence on meritorious
6 service, I have no idea what the volume of that might
7 be, but I would want also an admissions date, but it
8 could be a date, I mean, a date on which we just meet
9 to receive exhibits on the record. I mean, that could
10 be something that I, you and the concurrents could do
11 away with, in other words, to eliminate if it looks
12 like the volume isn't going to call for it, but let's
13 put it in in terms of your thinking on the scheduling.

14 Okay. So we have got the hearing date,
15 the admissions date. Again, we're going back in time.
16 There's the filing of trial briefs and in the trial
17 briefs, there are four elements to the trial brief
18 that I require. One is a proffer of proof. Secondly
19 would be a summary of what you would expect each
20 witness to testify to. Of course, that includes a
21 list of your witnesses with a description of what they
22 will testify to, and a statement of the relevance of

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1 the testimony. Three, a list of the documents, a
2 short description and, again, a relevance statement.
3 And then fourth, points and authorities on any
4 evidentiary or procedural issue that you think might
5 come up that I should be aware of.

6 Okay. So those are three dates now and
7 now, I'm moving down to the next one. That would be
8 the opposition to notifications and there could be
9 notifications two ways, the notifications for friendly
10 witnesses or party witnesses and then subpoenas of
11 nonparty witnesses or witnesses who would be reluctant
12 to show up voluntarily. So if that's the case, then
13 you're going to have to factor in for different dates
14 for different considerations, and then there would
15 have to be an opportunity to oppose a subpoena, that
16 type of thing.

17 Okay. That's the opposition date then.
18 Again, moving back in time, then there would be the
19 notification and the service of subpoenas dates, and
20 then there would be the exchange of cases prior to the
21 witness notification and then a date for terminating
22 discovery.

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1 Now, as I said, I was based on the Hearing
2 Designation Order and what I knew as of yesterday. I
3 had this scheduled out from November 6th up to January
4 11th. That, you know, clearly wouldn't work, so there
5 is no sense in even setting them down as provisional
6 dates. I don't see any point in that. So I will wait
7 to hear from you in 30 days on what you would propose.

8 I gave you my housekeeping rules. I did.
9 I think that concludes it as far as my agenda is
10 concerned. Does anybody else have anything more? No?

11 MR. SHOOK: Excuse me. I'm sorry, Your
12 Honor. I was listening to co-counsel.

13 JUDGE SIPPEL: Oh, do you have anything
14 further that you want to bring up or discuss?
15 Anything more?

16 MR. SHOOK: I take it, at this point,
17 since we are here, you do not need a formal Notice of
18 Appearance from us.

19 JUDGE SIPPEL: No, no, no, not in this
20 case, no. If Golden Gate had come in though, I would
21 have been in a bind. So no, no, no, I'm not going to
22 insist that you file one now.

1 MR. SHOOK: Then we have nothing more.

2 JUDGE SIPPEL: Okay. I should just, out
3 of an abundance of caution, and I have researched this
4 and I have no problems with this, but I do have a
5 daughter who is teaching in the San Francisco school
6 system in the special ed program starting in
7 September. As I say, I have looked into it. I have
8 researched. I am satisfied that there is no conflict
9 in a case like this and in the virtue of the position
10 that she's holding. Okay.

11 We are in recess, I guess, until further
12 call and I want to hear from you in 30 days, if not
13 before. Thank you.

14 MS. REPP: Thank you.

15 MR. SHOOK: Thank you, Your Honor.

16 (Whereupon, the prehearing conference was
17 concluded at 10:11 a.m.)
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MB DOCKET NO. 04-191

Docket No. (if applicable)

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Place of Hearing

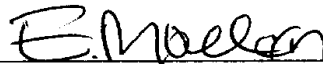
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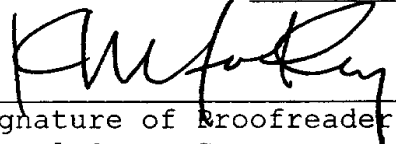
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